THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Date: 30-11-2007

WRIT PETITION No. 24986 OF 2007

BETWEEN:

Smt.Shanti Agarwal.

…Petitioner

And

Hon'ble Court of Chief Judge, City Civil Court, Hyderabad and others.

…Respondents

ORDER:

The Petitioner seeks to issue a writ of prohibition, declaring, entertaining of A.S.No.527 of 2007 on the file of the II-Additional Chief Judge, City Civil Court, Hyderabad As illegal, arbitrary, without jurisdiction and contrary to the provisions of Code of Civil Procedure and to forbear the said Court from taking the matter any further.

It is the case of the petitioner that she filed O.S.No.3184 of 1987 on the file of the VIII Junior Civil Judge, City Civil Court, Hyderabad for perpetual injunction, restraining the defendants therein from interfering with her peaceful possession and enjoyment in an extent of 4,664 Sq. yards in Sy.No.284/6, with room bearing Municipal No.13-6-437/A/36, situated at Nanal Nagar, Gudi Malkapur, Hyderabad and the said suit was decreed by the Judgment and decree dated 30-9-1994 against the defendants namely (1) Sheik Jahangir, (2) Sheik Abdullah, (3) Chandra Karan Garg and (4) Ramesh Kumar Garg. The third respondent herein is the third defendant in the said suit.

It is stated that the said decree granting perpetual

injunction has become final and when the third defendant/third respondent herein failed to obey the decree, the petitioner filed E.P.No.380 of 2004 on the file of VIII Junior Civil Judge, City Civil Court, Hyderabad, in which, the third respondent filed E.A.No.1127 of 2007, seeking to conduct a detailed and full-fledged enquiry in E.P.No.380 of 2004 and the said application was dismissed by order dated 23-10-2007. Against the said order, the third respondent filed A.S.No.527 of 2007 under Order 41 Rule 1, read with Section 96 of the Code of Civil Procedure.

It is the case of the petitioner that the said appeal is not maintainable and the appeal has been filed with malafide intention knowing fully well that no appeal is maintainable and trying to drag on the execution proceedings. It is stated that the petitioner could have filed a revision under Article 227 of the Constitution of India as no revision is maintainable under Section 115 of the Code of Civil Procedure. It is further stated that E.A.No.1127 of 2007 filed by the third respondent is not maintainable and therefore, entertaining the appeal by the second respondent i.e., the II-Additional Chief Judge, City Civil Court, Hyderabad is illegal, arbitrary and without jurisdiction.

The petitioner submits that a writ of prohibition is maintainable as the second respondent has no jurisdiction to

entertain the appeal as no appeal is maintainable against the order of the executing Court.

I am not inclined to express any opinion on the merits of the case. It is just and proper for this Court to examine the issue as to whether the appeal is maintainable or not against the said order under Article 227 of Constitution of India. This Court has got power of superintendence over the Subordinate Courts and therefore if any Civil Revision Petition is filed under Article 227 of the Constitution of India, the said Civil Revision Petition has to be dealt with by the concerned Portfolio Judge of this Court. It is always desirable for the inspecting Judge to consider such questions as to whether the second respondent Court has got jurisdiction or not in exercise of the superintendence power under Article 227 read with Article 235 of the Constitution of India.

In view of the aforesaid facts and circumstances of the case, it may not be just and proper to entertain the writ petition and the writ petition is accordingly dismissed with a liberty to file a Civil Revision Petition under Article 227 of the Constitution of India.

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V.ESWARAIAH, J

Date: 30-11-2007.

Shr.